

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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SHANE BURRIS,

Index No.: 7:22-CV-10379

Plaintiff,

- against -

AMENDED COMPLAINT

COUNTY OF PUTNAM, PUTNAM COUNTY
SHERIFF'S DEPARTMENT and "JOHN DOES,
#1-10",

**PLAINTIFF DEMANDS
A TRIAL BY JURY**

Defendants.

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Plaintiff, by his attorneys, **WEINSTOCK LAW, PLLC**, complaining of the Defendants,
respectfully alleges, upon information and belief:

INTRODUCTION

1. This action seeks redress for the treatment of and injuries to Plaintiff SHANE BURRIS, sustained at the hands of COUNTY OF PUTNAM, PUTNAM COUNTY SHERIFF'S DEPARTMENT and "JOHN DOES, #1-10" when he was wrongfully subjected to the use of grossly excessive, improper and unconstitutional force by Defendants.

2. This force included physical contact, and other actions by the individual defendants, who are police/sheriff's officers employed by the COUNTY OF PUTNAM and the PUTNAM COUNTY SHERIFF'S DEPARTMENT. The Plaintiff, was both detained in violation of his rights under the Fourth Amendment to the United States Constitution, the New York Constitution and

New York common law and subjected to excessive force in violation of his rights under the Fourth and Eighth Amendments to the United States Constitution, as well as New York law. The plaintiff brings claims against the defendants pursuant to 42 U.S.C. § 1983 and New York law for money damages against the captioned defendants, individually and collectively, for committing acts under color of law that deprived plaintiffs of their rights as detailed above.

3. In addition, the plaintiffs bring a claim against the COUNTY OF PUTNAM and the PUTNAM COUNTY SHERIFF'S DEPARTMENT pursuant to 42 U.S.C. §1983 for negligently employing and failing to train and supervise the officers/sheriffs.

4. Put simply, the defendants, COUNTY OF PUTNAM, PUTNAM COUNTY SHERIFF'S DEPARTMENT and "JOHN DOES, #1-10", in their individual and official capacities, negligently handled, intentionally assaulted, negligently assaulted, battered, used excessive, improper and unnecessary force, and negligently, intentionally, and without cause injured the plaintiff, SHANE BURRIS, causing severe physical harm and injury, extreme pain and suffering, psychological damages, all in violation of his constitutional and civil rights.

JURISDICTION & VENUE

5. That at all times hereinafter mentioned, plaintiff brings this suit for a violation of their civil rights under 42 U.S.C. §§1981 and 1983 and within the United States Constitution and the laws of the State of New York and that this Court has jurisdiction of this action pursuant to 28 U.S.C. §§1331 and 1343(3) and (4).

6. Plaintiff further invokes the supplemental jurisdiction of this Court, pursuant to 28 U.S.C. §1367, to hear and decide any and all claims arising under state law.

7. The venue is laid within the United States District Court for the Southern District of New York in that the incident arose in the Southern District of New York and all Defendants reside in the Southern District of New York.

8. Plaintiff demands a trial by jury on each and every one of the claims pled herein.

PARTIES

9. Plaintiff SHANE BURRIS resides at 8 Oak Street, Walden New York 12586.

10. Defendants COUNTY OF PUTNAM and PUTNAM COUNTY SHERIFF'S DEPARTMENT are municipal corporations duly organized and existing by virtue of the laws of the State of New York.

11. In addition to the facts alleged in the following sub paragraphs, the officers of the PUTNAM COUNTY SHERIFF'S DEPARTMENT are sued in their individual and official capacities and all acted within the scope of their employment and under color of state law, to wit, under color of statutes, ordinances, regulations, policies, customs and usages of the State of New York and/or COUNTY OF PUTNAM.

12. Defendants, "JOHN DOES #1-10", were at all relevant times a police officer employed by the defendants, COUNTY OF PUTNAM and PUTNAM COUNTY SHERIFF'S DEPARTMENT.

13. The identity of Defendants, "JOHN DOES #1-10", is at this time in the sole possession of Defendants COUNTY OF PUTNAM and PUTNAM COUNTY SHERIFF'S DEPARTMENT, specifically Senior Investigator John Alfano.

NOTICE OF CLAIM

14. On September 30, 2022, timely Notices of Claim were filed with Defendants COUNTY OF PUTNAM and PUTNAM COUNTY SHERIFF'S DEPARTMENT in compliance with General Municipal Law § 50-h.
15. The Notices of Claim were on behalf of plaintiff, SHANE BURRIS.
16. More than thirty (30) days have elapsed since the Notices of Claim were filed and the COUNTY OF PUTNAM and PUTNAM COUNTY SHERIFF'S DEPARTMENT have failed to pay or adjust the claims.
17. On November 17, 2022, the COUNTY OF PUTNAM and PUTNAM COUNTY SHERIFF'S DEPARTMENT conducted a municipal hearing of SHANE BURRIS pursuant to New York General Municipal Law §50-h.
18. Plaintiff complied with all conditions precedent for the commencement of this action.
19. On November 18, 2022 this action was commenced in the Supreme Court of the State of New York, County of Putnam bearing Index No. 501329/2022.
20. This action has been commenced within one (1) year and ninety (90) days after the happening of the events upon which the State Law claims arise.
21. On December 8, 2022 Defendants removed this action to Federal Court in the United States District Court, Southern District of New York.
22. The defendant, COUNTY OF PUTNAM, its agents, servants and/or employees operated, maintained, and controlled a police force known as the PUTNAM COUNTY SHERIFF'S DEPARTMENT, including the police officers employed therein.

23. That at all times hereinafter mentioned, Defendants, "JOHN DOES #1-10", were employed by the PUTNAM COUNTY SHERIFF'S DEPARTMENT.

FACTUAL ALLEGATIONS

24. On September 7, 2022, at approximately 2:30 P.M., SHANE BURRIS was a lawful passenger of a motor vehicle being driven by his brother Kyle Burris that had been pulled over and was present on the side of the northbound lanes of the Taconic State Parkway in Putnam County, New York.

25. At the time, SHANE BURRIS was unarmed and presented no threat to anyone.

26. While being present at the location detailed above, SHANE BURRIS was approached by police/sheriff's officers employed by the COUNTY OF PUTNAM and PUTNAM COUNTY SHERIFF'S DEPARTMENT whereat an unlawful detainment/arrest and wrongful imprisonment occurred.

27. Specifically the police/sheriff's officers reached into the Plaintiff's pants and undergarments, while on the side of the northbound lanes of the public roadway the Taconic State Parkway in Putnam County, New York.

28. Plaintiff SHANE BURRIS was wrongfully and illegally taken into custody by the Defendants and brought to the Putnam County Sheriff's Department located at 3 County Center, Carmel, New York.

29. The vehicle in which Plaintiff and his brother were riding in before being pulled over, a 2007 Ford Edge, was owned by the Plaintiff SHANE BURRIS. An officer took the Burris vehicle from the above mentioned scene, drove it 5-6 exits, and left it in a municipal parking lot. The vehicles transmission was permanently damaged.

30. The tortious acts continued on September 7, 2022 at approximately 3:30- 4:00 p.m. at the Putnam County Sheriff's Department located at 3 County Center, Carmel, New York while Plaintiff SHANE BURRIS was in the custody and care of the Defendants COUNTY OF PUTNAM and PUTNAM COUNTY SHERIFF'S DEPARTMENT and was caused to sustain serious physical injuries during a cavity 'search' when he was assaulted and battered by the hand/fingers of a PUTNAM COUNTY SHERIFF'S DEPARTMENT officer, in his anus/sphincter/rectum and its surrounding area both inside and outside the body, causing said injuries as well as serious and severe psychological damage.

31. A Sheriff office of the Defendants COUNTY OF PUTNAM and PUTNAM COUNTY SHERIFF'S DEPARTMENT slammed Plaintiff SHANE BURRIS' head against a wall at the Putnam County Sheriff's Department located at 3 County Center, Carmel, New York.

32. The aforementioned acts by the Defendants were performed knowingly, intentionally, and willfully.

33. The aforementioned acts by the Defendants were performed negligently, recklessly, and carelessly.

34. The aforementioned acts by the Defendants were performed without reason or provocation.

35. The aforementioned acts by the Defendants resulted in injury to Plaintiff.

36. At no time during the events described above or as the events occurred did Defendants COUNTY OF PUTNAM, PUTNAM COUNTY SHERIFF'S DEPARTMENT and "JOHN DOES, #1-10" have a permissible basis for nor probable cause to use of excessive and grossly improper force upon SHANE BURRIS.

37. At no time during the events described above or as the events occurred did Defendants COUNTY OF PUTNAM, PUTNAM COUNTY SHERIFF'S DEPARTMENT and "JOHN DOES, #1-10", have probable cause for the assault, battery, and wrongful arrest of SHANE BURRIS.

38. The actions of Defendants "JOHN DOES, #1-10" were performed within the scope of the employment and, authority, accordingly, the defendants COUNTY OF PUTNAM and PUTNAM COUNTY SHERIFF'S DEPARTMENT are liable under the doctrine of *respondeat superior*.

39. By reason of aforementioned acts of the Defendants, SHANE BURRIS was caused to suffer severe physical injuries and pain and suffering, as well as emotional and psychological distress and horror.

COUNT I

ASSAULT AND BATTERY UNDER STATE LAW AGAINST ALL DEFENDANTS

40. The plaintiff repeats, realleges and reiterates each and every allegation set forth above numbered "1" through "39" inclusive with the same force and effect as if more fully set forth at length herein.

41. On September 7, 2022, at approximately 2:30 P.M., SHANE BURRIS was a lawful passenger of a motor vehicle being driven by his brother Kyle Burris that had been pulled over and was present on the side of the northbound lanes of the Taconic State Parkway in Putnam County, New York.

42. Soon after being approached by the police/sheriffs on September 7, 2022, SHANE BURRIS was subjected to unnecessary physical force which was applied by Defendants “JOHN DOES 1-10”.

43. Soon after being approached by the police on September 7, 2022, SHANE BURRIS was subjected to unwanted physical touching by Defendants “JOHN DOES 1-10”.

44. At the time that Defendants “JOHN DOES 1-10” came in contact with SHANE BURRIS, they were acting in their capacity as an employee of the PUTNAM COUNTY SHERIFF’S DEPARTMENT.

45. Prior to being touched, SHANE BURRIS was aware of and in fear that Defendants “JOHN DOES 1-10” intended to make physical contact with him.

46. Prior to being physically assaulted, SHANE BURRIS was aware and in fear that Defendants “JOHN DOES 1-10” intended to use excessive force would make physical contact with them.

47. The aforementioned touching by Defendants “JOHN DOES 1-10” was performed knowingly, willfully, and intentionally.

48. When making physical contact with SHANE BURRIS, Defendants “JOHN DOES 1-10” were acting within their scope of their employment with the COUNTY OF PUTNAM and PUTNAM COUNTY SHERIFF’S DEPARTMENT.

49. The physical contact Defendants “JOHN DOES 1-10” made with SHANE BURRIS was without privilege or justification.

50. The physical contact Defendants “JOHN DOES 1-10” made with SHANE BURRIS was without probable cause.

51. By reason of said assault and battery, SHANE BURRIS was caused to suffer severe physical injuries and pain and suffering, emotional and psychological distress and horror.

By reason of the foregoing, SHANE BURRIS demands judgment for assault and battery against defendants, COUNTY OF PUTNAM, PUTNAM COUNTY SHERIFF’S DEPARTMENT and “JOHN DOES, #1-10”.

COUNT II

**MONELL CLAIM FOR NEGLIGENT HIRING, TRAINING AND RETENTION
AGAINST THE COUNTY OF PUTNAM**

52. The plaintiff repeats, realleges and reiterates each and every allegation set forth above numbered “1” through “51” inclusive with the same force and effect as if it more fully set forth at length herein.

53. COUNTY OF PUTNAM was aware that its employees, including police and sheriffs officers employed in the PUTNAM COUNTY SHERIFF’S DEPARTMENT would encounter individuals in the position of Plaintiff SHANE BURRIS.

54. The police officers and sheriffs employed in the PUTNAM COUNTY SHERIFF’S DEPARTMENT failed to use proper procedures and tactics as reasonably prudent and careful police officers would have used under similar circumstances. COUNTY OF PUTNAM failed to properly train its police officers.

55. The police officers employed in the PUTNAM COUNTY SHERIFF'S DEPARTMENT failed to use proper police procedures and tactics as reasonably prudent and careful police officers would have used under similar circumstances. COUNTY OF PUTNAM failed to properly interview and vet its officers to be certain that they did not have violent tendencies.

56. The police officers employed in the PUTNAM COUNTY SHERIFF'S DEPARTMENT failed to use proper police procedures and tactics as reasonably prudent and careful police officers would have used under similar circumstances. COUNTY OF PUTNAM failed to properly train its officers to recognize appropriate situations to use same and to instruct officers when such force should not be used.

57. Included in the officers who were improperly trained, hired and retained, were and are Defendants "JOHN DOES 1-10".

58. As a proximate result of COUNTY OF PUTNAM's unconstitutional policy of failing to properly train, hire and retain Defendants "JOHN DOES 1-10", SHANE BURRIS was subjected to unnecessary physical force.

59. By reason of the foregoing, SHANE BURRIS demands judgment against COUNTY OF PUTNAM and the PUTNAM COUNTY SHERIFF'S DEPARTMENT.

COUNT III

CIVIL RIGHTS VIOLATION 42 U.S.C. §1983 (4th AMENDMENT) **AS AGAINST COUNTY OF PUTNAM, PUTNAM COUNTY SHERIFF'S** **DEPARTMENT AND "JOHN DOES 1-10"**

60. The plaintiff repeats, realleges and reiterates each and every allegation set forth above numbered "1" through "59" inclusive with the same force and effect as if it more fully set forth at length herein.

61. On September 7, 2022, Defendants “JOHN DOES 1-10” were acting in their capacity as police/sheriff officers for Defendants COUNTY OF PUTNAM and the PUTNAM COUNTY SHERIFF’S DEPARTMENT when they came in physical contact with SHANE BURRIS.

62. On September 7, 2022, Defendants “JOHN DOES 1-10” were acting under color of law when they came in physical contact with SHANE BURRIS.

63. On September 7, 2022, SHANE BURRIS did not consent to be physically touched by Defendants “JOHN DOES 1-10” nor by anyone acting on behalf of Defendants COUNTY OF PUTNAM and the PUTNAM COUNTY SHERIFF’S DEPARTMENT.

64. On September 7, 2022, SHANE BURRIS did not consent to be recklessly physically assaulted battered by Defendants “JOHN DOES 1-10” nor by anyone acting on behalf of Defendants COUNTY OF PUTNAM and the PUTNAM COUNTY SHERIFF’S DEPARTMENT.

65. On September 7, 2022, SHANE BURRIS did not consent to be taken into custody by Defendants “JOHN DOES 1-10”.

66. On September 7, 2022, SHANE BURRIS was seized by Defendants COUNTY OF PUTNAM, PUTNAM COUNTY SHERIFF’S DEPARTMENT and “JOHN DOES 1-10”, within the meaning of the Fourth Amendment to the United States Constitution.

67. Defendants COUNTY OF PUTNAM, PUTNAM COUNTY SHERIFF’S DEPARTMENT and “JOHN DOES 1-10” seizure of SHANE BURRIS was without privilege under State or Federal law.

68. In seizing SHANE BURRIS, Defendants COUNTY OF PUTNAM, PUTNAM COUNTY SHERIFF'S DEPARTMENT and "JOHN DOES 1-10" used physical force, including recklessly physically assaulting and battering the plaintiff.

69. The use of such physical force to seize SHANE BURRIS was not justified under State or Federal Law.

70. The force used to seize SHANE BURRIS was excessive as he had not committed any crime.

71. The force used to seize SHANE BURRIS was excessive as they were neither a threat to themselves nor to others.

72. The use of excessive physical force to seize SHANE BURRIS was an independent violation of the rights guaranteed to him by the Fourth Amendment to the United States Constitution.

73. By reason of the foregoing, SHANE BURRIS demands judgment against defendants COUNTY OF PUTNAM, PUTNAM COUNTY SHERIFF'S DEPARTMENT and "JOHN DOES, #1-10" for violating the rights guaranteed to him by the Fourth Amendment to the United States Constitution.

COUNT IV
NEGLIGENCE

74. The plaintiff repeats, realleges and reiterates each and every allegation set forth above numbered "1" through "73" inclusive with the same force and effect as if it more fully set forth at length herein.

75. At all times herein mentioned, Defendants COUNTY OF PUTNAM, PUTNAM COUNTY SHERIFF'S DEPARTMENT and "JOHN DOES, #1-10" breached a duty of care owed to the Plaintiff SHANE BURRIS in that the Defendants failed to act reasonably and prudent under the circumstances existing on September 7, 2022.

76. That as a result of the negligence of the Defendants, Plaintiff SHANE BURRIS was injured.

77. That the aforesaid occurrence was caused wholly and solely by reason of the negligence of the Defendants COUNTY OF PUTNAM, PUTNAM COUNTY SHERIFF'S DEPARTMENT and "JOHN DOES, #1-10" without any fault or negligence on the part of the Plaintiff SHANE BURRIS contributing thereto.

78. That the aforesaid occurrence was caused wholly and solely by reason of the negligence of the Defendants COUNTY OF PUTNAM, PUTNAM COUNTY SHERIFF'S DEPARTMENT and "JOHN DOES, #1-10" without any fault or negligence on the part of the Plaintiff SHANE BURRIS contributing thereto.

79. That Defendants COUNTY OF PUTNAM, PUTNAM COUNTY SHERIFF'S DEPARTMENT and "JOHN DOES, #1-10" were negligent, careless and reckless in their contact with Plaintiff SHANE BURRIS on September 7, 2022.

COUNT V
PROPERTY DAMAGE

80. The plaintiff repeats, realleges and reiterates each and every allegation set forth above numbered "1" through "79" inclusive with the same force and effect as if it more fully set forth at length herein.

81. That as a result of the foregoing, Plaintiff SHANE BURRIS was caused to sustain property damage to his motor vehicle for transmission damage plus costs and fees.

82. The above mentioned occurrence, and the results thereof, was caused wholly and solely by the negligence and breach of duty of the Defendants COUNTY OF PUTNAM, PUTNAM COUNTY SHERIFF'S DEPARTMENT and "JOHN DOES, #1-10" and/or said Defendants' servants, agents, employees and/or licensees in the inspection, operation and control of the aforesaid motor vehicle and the Defendants COUNTY OF PUTNAM, PUTNAM COUNTY SHERIFF'S DEPARTMENT and "JOHN DOES, #1-10" were otherwise negligent, careless and reckless.

83. That no negligence on the part of the Plaintiff SHANE BURRIS contributed to the occurrence alleged herein in any manner whatsoever.

PRAYER FOR RELIEF

WHEREFORE, as a direct and proximate result of the aforesaid acts of the Defendants, plaintiff SHANE BURRIS prays for relief against defendants as follows:

- A. Plaintiff, SHANE BURRIS, claims damages for violation of civil rights under the Fourth, Eighth and Fourteenth Amendments to the United States Constitution and 42 U.S.C. §1981 and 1983;
- B. Plaintiff SHANE BURRIS claims damages for assault and battery, negligence, negligent hiring, negligent training, negligent retention and property damage;
- C. Plaintiff, SHANE BURRIS claims damages for attorney's fees, costs, disbursements and expert fees under 42 U.S.C. §1983;

D. Damages are claimed on behalf of the plaintiff in an amount which a jury shall determine to be fair and equitable;

E. Plaintiff claims damages for punitive damages against the individual defendants, in an amount which a jury shall determine is appropriate to deter future similar conduct and such other and further relief as to this Court may seem just, equitable and proper.

Dated: Cedarhurst, New York
December 19, 2022

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